

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MICHAEL CASANOVA,

Plaintiff,

-against-

NASSAU COUNTY MEDICAL CENTER, et al.,

Defendants.
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**REPORT AND
RECOMMENDATION**
CV 07-2913 (JFB)(ARL)

LINDSAY, Magistrate Judge:

For the following reasons, the undersigned respectfully recommends that this action be administratively closed without prejudice to reopen. The procedural history of this action has been set forth previously. (*See* Docket Entry 36.) In sum, the pro se plaintiff has had long-standing difficulties in completing discovery because he has been transferred amongst different correctional facilities, he is currently incarcerated in a special housing unit, and his case-related paperwork has been lost. In light of these delays, the court has repeatedly provided the plaintiff with more time to complete discovery and has warned the plaintiff about the risk of dismissal due to his failure to prosecute. (*See* Docket Entries 22, 24, 29, 32, 36.) Presently, the plaintiff indicates that he is unable to complete a revised narrative statement, exhibit list, witness list, and summary of testimony as required by the undersigned's orders.

The plaintiff has fulfilled his duty to notify the court each time that he has been transferred to a new correctional facility, he has responded to the undersigned's orders, and his inability to complete discovery appears to be beyond his control. Accordingly, dismissal with prejudice for failure to prosecute is not warranted. Instead, the undersigned respectfully

recommends that the district court administratively close this case with leave to re-open upon a letter from the plaintiff indicating that he is able to complete discovery, in particular that he is able to complete his revised narrative statement, exhibit list, witness list, and summary of testimony.

A copy of this report and recommendation will be transmitted to defendant's counsel via ECF and mailed to plaintiff at his last-known address by certified mail. Any objections must be filed within ten days of such service. Failure to file objections within this period waives the right to appeal the District Court's Order. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72; *Beverly v. Walker*, 118 F.3d 900, 902 (2d Cir. 1997); *Savoie v. Merchants Bank*, 84 F.3d 52, 60 (2d Cir. 1996).

Dated: Central Islip, New York
November 5, 2009

_____/s/_____
ARLENE R. LINDSAY
United States Magistrate Judge